

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201014255	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/13/2010 4:30 PM	Location of Incident: Brooklyn Queens Expressway and Kane Street; 76th Precinct Stationhouse	Precinct: 76	18 Mo. SOL 4/13/2012	EO SOL 4/13/2012	
Date/Time CV Reported Fri, 10/15/2010 8:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/18/2010 12:32 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kensignto Cunningham	06374	931616	076 PCT
2. SGT Patrick Quigley	00005	934081	076 PCT
3. POM Tsz Kwan	07464	935140	076 PCT
4. An officer			076 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Arnaldo Alvarado	00000	873428	076 PCT
2. POM Julio Rodriguez	22668	939344	076 PCT
3. POM Rosario Garofano	00681	934907	076 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Patrick Quigley	Abuse: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley supervised the stop of the car in which § 87(2)(b) was an occupant.	
B.SGT Patrick Quigley	Force: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley pointed his gun at § 87(2)(b)	
C.POM Kensignto Cunningham	Force: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham pointed his gun at § 87(2)(b)	
D.SGT Patrick Quigley	Discourtesy: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)	
E.POM Kensignto Cunningham	Discourtesy: At the Brooklyn Queens Expressway and Kane Street in Brooklyn and at the 76th Precinct stationhouse, PO Kensington Cunningham spoke obscenely and/or rudely to § 87(2)(b)	
F. An officer	Discourtesy: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, an officer spoke obscenely and/or rudely to § 87(2)(b)	
G.POM Kensignto Cunningham	Force: At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham used physical force against § 87(2)(b)	
H.SGT Patrick Quigley	Discourtesy: At the 76th Precinct stationhouse, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.POM Tsz Kwan	Discourtesy: At the 76th Precinct stationhouse, PO Tsz Kwan spoke obscenely and/or rudely to § 87(2)(b)	

Case Summary

On October 18, 2010, § 87(2)(b) called the CCRB and filed the following complaint (Encl. 3A-B). On October 15, 2010, § 87(2)(b) had called IAB and filed a complaint regarding the same incident, which was subsequently forwarded to the CCRB via IAB log#10-5188 on October 26, 2010 (Encl. 2A).

At approximately 4:30 p.m. on October 13, 2010, § 87(2)(b)'s vehicle was pulled over at the intersection of the Brooklyn Queens Expressway and Kane Street in Brooklyn by Sgt. Patrick Quigley and PO Kensington Cunningham. § 87(2)(b) was arrested and taken to the 76th Precinct stationhouse, where his arrest was voided and he was released. The following allegations resulted:

- **Allegation A – Abuse of Authority – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley supervised the stop of the car in which § 87(2)(b) was an occupant.**
§ 87(2)(b), § 87(2)(g)
- **Allegation B – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley pointed his gun at § 87(2)(b)**
- **Allegation C – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham pointed his gun at § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- **Allegation D – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- **Allegation E – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn and at the 76th Precinct stationhouse, PO Kensington Cunningham spoke obscenely and/or rudely to § 87(2)(b)**
- **Allegation H – Discourtesy – At the 76th Precinct stationhouse, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)**
- **Allegation I – Discourtesy – At the 76th Precinct stationhouse, PO Tsz Kwan spoke obscenely and/or rudely to § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- **Allegation F – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, an officer spoke obscenely and/or rudely to § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- **Allegation G – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham used physical force against § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 5'8" tall, 260 pounds § 87(2)(b) white male with a bald head and brown eyes. § 87(2)(b)

Statement to Medical Provider

On October 16, 2010, § 87(2)(b) went to § 87(2)(b) Hospital (Encl. 4A). He reported that, two days prior, his vehicle had been pulled over by undercover officers who dragged him on the ground and "assaulted" him, leading to pain in his elbow.

CCRB Testimony

On November 22, 2010, § 87(2)(b) was interviewed at CCRB. His statement was largely consistent with his IAB complaint, filed on October 15, 2010 (Encl. 2A), and his initial CCRB complaint, filed on October 18, 2010 (Encl. 3A-B). The three statements are summarized below, with any inconsistencies noted.

§ 87(2)(b) runs a used Car Dealership in Burlington, New Jersey. His dealer plates all begin with § 87(2)(b) (Encl. 4H). On July 28, 2007, § 87(2)(b) reported to the 63rd Precinct that one of his plates, § 87(2)(b), had been stolen (Encl. 4I-J). The plates were never found.

On October 13, 2010, § 87(2)(b) left Burlington, New Jersey, in a 2009 Ford E350 van with dealer plate # § 87(2)(b), headed to Brooklyn to deliver the van to a customer. At about Exit 8 on the New Jersey Turnpike, § 87(2)(b) saw a sheriff's patrol car following behind him. The patrol car followed him into New York. At approximately 4:30 p.m., while driving on the Brooklyn Queens Expressway (henceforth referred to as the BQE), near the intersection with Kane Street in Brooklyn, § 87(2)(b) saw several marked police cars blocking the BQE. § 87(2)(b) then saw two plainclothes officers, identified via the investigation as Sgt. Patrick Quigley and PO Kensington Cunningham, exit an unmarked black Chevrolet Impala and approach his vehicle. Both Sgt. Quigley and PO Cunningham approached the driver's side of § 87(2)(b)'s car with their guns drawn and pointed at § 87(2)(b). Sgt. Quigley said to § 87(2)(b) "Get the fuck out of the truck." § 87(2)(b) turned off his car, put his hands out of the window and said, "I have license, registration, this is my business, you've made a mistake." Sgt. Quigley said to him, "Shut the fuck up and get out of the car." § 87(2)(b) opened the door and stepped out of his car with his hands up. When he stepped out of the car, both officers told § 87(2)(b) to "get the fuck on the floor." § 87(2)(b) stated initially that the two officers then pushed him to the floor. Upon further questioning, however, he stated that he was not pushed onto the ground but that he laid on the ground voluntarily. The officers handcuffed § 87(2)(b) and flipped him onto his back. While the officers were turning him, § 87(2)(b)'s left arm scraped the ground and he suffered a minor scratch. § 87(2)(b) continued to protest, telling the officers that they had made a mistake. Both officers said to him, "We don't care, shut the fuck up." An unidentified plainclothes officer, who § 87(2)(b) had not seen previously and described as an approximately 5'6" tall Hispanic male in his early-to-mid-30s with a "chubby" build and short black hair, approached him and said, "Shut the fuck up, you're lucky I didn't break your teeth."

Sgt. Quigley and PO Cunningham took § 87(2)(b) to the unmarked car and attempted to place him inside. § 87(2)(b) refused to go into the unmarked car and continued to tell the officers to check his documents to prove that they had made a mistake. PO Cunningham told him to “shut the fuck up” and pushed him into the unmarked car.

§ 87(2)(b) was driven to the 76th Precinct stationhouse and brought before the desk. There were two officers at the desk, identified via the investigation as Lt. Arnaldo Alvarado and PO Tsz Kwan. PO Cunningham frisked § 87(2)(b) and then he and PO Kwan began to search him by reaching into his pockets. § 87(2)(b) protested and attempted to explain the misunderstanding to the officers. Sgt. Quigley, PO Cunningham, and PO Kwan repeatedly told him to “shut the fuck up.” § 87(2)(b) was placed in a cell. About 20 to 35 minutes later § 87(2)(b) was released.

Notice of Claim

In a Notice of Claim filed on January 12, 2011 (Encl. 4M-P), § 87(2)(b) stated that on October 13, 2010, his vehicle was stopped by NYPD officers and he was “ordered out of his vehicle, thrown onto the street face down, handcuffed, threatened, and then imprisoned in a police vehicle.”

NYPD Statement(s):

Subject Officer: SGT. PATRICK QUIGLEY

- *Sgt. Quigley is a § 87(2)(b).*
- *Sgt. Quigley worked from 9:16 a.m. to 6:45 p.m. on October 13, 2010, assigned as the Anti-Crime Supervisor in the 76th Precinct with PO Kensington Cunningham and Po Julio Rodriguez. They were in plainclothes and assigned to an unmarked black Chevrolet Impala.*

Memo Book

Sgt. Quigley’s memo book (Encl. 5A-B) has an entry indicating that at 5:00 p.m. police officers from New Jersey made a “10-13” (Officers in need of assistance) call on the Brooklyn Queens Expressway. An individual was arrested for criminal possession of stolen property but further investigation revealed that the property was not stolen and the individual was released.

CCRB Testimony

On February 8, 2011, Sgt. Quigley was interviewed at the CCRB (Encl. 5C-E).

At approximately 4:30 p.m. on October 13, 2010, Sgt. Quigley and PO Cunningham were at the 72nd Precinct stationhouse when they received a “10-13” radio transmission, stating that officers from a New Jersey Sheriff’s Office were on the Brooklyn Queens Expressway in Brooklyn and were attempting to apprehend a perpetrator in a stolen vehicle and needed immediate assistance.

A few minutes later Sgt. Quigley and PO Cunningham arrived on the Brooklyn Queens Expressway, near the intersection with Kane Street, and spotted a marked New Jersey police car following a grey van with the plate number provided in the radio call. Sgt. Quigley did not recall there having been an attempt by officers to create a roadblock in front of § 87(2)(b)’s vehicle on the expressway. Sgt. Quigley and PO Cunningham pulled the van over to the side of the road. Sgt. Quigley exited the patrol car and drew his gun. He approached the driver’s door with his gun pointed at the driver, who they later identified as § 87(2)(b). § 87(2)(b) Sgt. Quigley stated that he had his gun drawn and pointed because of the potential danger involved in stopping a stolen car, the severity implied in a “10-13” call, and the limited amount of information he had regarding what or who could potentially be inside the van. Sgt. Quigley did not recall

whether PO Cunningham also drew and/or pointed his gun.

Sgt. Quigley ordered § 87(2)(b) to exit the van. § 87(2)(b) remained in the vehicle and, after asking him several more times, Sgt. Quigley told § 87(2)(b) to “get the fuck out” of his vehicle. When § 87(2)(b) exited the van, Sgt. Quigley instructed him to get on to the ground. Again § 87(2)(b) did not respond to his command and Sgt. Quigley then told him “get on the fucking ground.” Sgt. Quigley stated that he used profanity because of the tense nature of the situation and because § 87(2)(b) was not responding to his multiple orders to get out of the car and then to get on the ground. § 87(2)(b) eventually lay onto his stomach on the ground. § 87(2)(b) went to the ground of his own volition and neither Sgt. Quigley nor PO Cunningham touched him while he was going to the ground. Sgt. Quigley denied having told § 87(2)(b) to “shut the fuck up.” Sgt. Quigley could not recall what, if anything, PO Cunningham said to § 87(2)(b) during this exchange.

Once § 87(2)(b) was on the ground, Sgt. Quigley and PO Cunningham handcuffed him. Sgt. Quigley did not recall either the two New Jersey Police officers or other NYPD officers having been involved in § 87(2)(b)'s handcuffing or talking to him while he was being arrested. Sgt. Quigley did not recall if there were other NYPD officers present at the scene besides himself and PO Cunningham. Sgt. Quigley did not hear an officer tell § 87(2)(b) “You are lucky I didn’t break your teeth” or threaten to use force against him. Sgt. Quigley did not recall having seen PO Cunningham push § 87(2)(b) into a patrol car.

At the 76th Precinct stationhouse, § 87(2)(b) was placed into a cell. An investigation was conducted and it was determined that § 87(2)(b)'s vehicle had been mistakenly flagged as stolen and § 87(2)(b)'s arrest was voided and he was released. Sgt. Quigley denied having told § 87(2)(b) to “shut the fuck up” or having heard any other officer tell him so.

Subject Officer: PO KENSINGTON CUNNINGHAM

- PO Cunningham is a § 87(2)(b).
- PO Cunningham worked from 9:30 a.m. to 6:05 p.m. on October 13, 2010, assigned to Precinct Anti-Crime in the 76th Precinct with Sgt. Patrick Quigley and PO Julio Rodriguez. They were in plainclothes and assigned to an unmarked black Chevrolet Impala.

Memo Book

PO Cunningham’s memo book (Encl. 5F-G) has an entry indicating that at 4:15 p.m. sheriffs from New Jersey made a “10-85” (Officers in need of assistance) call regarding a Grand Larceny Auto on the Brooklyn Queens Expressway. At 4:30 p.m. an individual was arrested and transported to the 76th Precinct stationhouse. At 5:50 p.m., the arrest was voided.

CCRB Testimony

On February 8, 2011, PO Cunningham was interviewed at the CCRB (Encl. 5K-M). This statement was consistent with the voided arrest report he filed for the arrests of § 87(2)(b) (Encl. 5H-J) and have been combined and summarized below. Furthermore, PO Cunningham’s statements were largely consistent those of Sgt. Quigley; consequently, the bulk of his account will not be included here.

PO Cunningham stated that, as they approached § 87(2)(b)'s van, both he and Sgt. Quigley had their guns drawn and pointed towards the vehicle. PO Cunningham stated that he had his gun drawn and pointed because of the potentially dangerous nature of the crime that the driver of the vehicle was suspected of, grand theft auto, and the fact that from the direction they were approaching the van he could not see the

driver or what he was doing. PO Cunningham and Sgt. Quigley ordered the driver, who they later identified as § 87(2)(b) multiple times to exit the vehicle. After approximately twenty seconds, § 87(2)(b) exited the van. Once § 87(2)(b) exited the vehicle, the officers ordered him to go to the ground. § 87(2)(b) remained standing for approximately five seconds and PO Cunningham placed his hand on his back and pushed him lightly to the ground. PO Cunningham did not push § 87(2)(b) forcefully because § 87(2)(b) was already on his way to ground and his hand simply guided him to the ground. PO Cunningham denied having told § 87(2)(b) to “get the fuck out” of his vehicle or to “get the fuck on the ground” and did not recall having heard Sgt. Quigley or any other officer say these things.

A few minutes after PO Cunningham and Sgt. Quigley had arrived at the scene, approximately two or three marked cars from the 76th Precinct with several uniformed officers arrived at the scene as well. He did not recall which officers these were. None of these officers or the New Jersey sheriffs were physically involved in § 87(2)(b)'s arrest. PO Cunningham did not tell § 87(2)(b) to “shut the fuck up” and he did not recall having heard another officer do so. He did not hear an officer tell § 87(2)(b) “You are lucky I didn’t break your teeth” or threaten to use force against him.

PO Cunningham and Sgt. Quigley drove § 87(2)(b) to the 76th Precinct but he did not recall by whom or how § 87(2)(b) was placed into their patrol car. PO Cunningham denied having told § 87(2)(b) to “shut the fuck up” inside the stationhouse or having heard any other officer tell him so.

PO Cunningham stated that the force listed on § 87(2)(b)'s voided arrest report as having been used during the arrest (Encl. 5I) referred to his hand guiding § 87(2)(b) to the ground. He stated that he checks that box whenever he makes an arrest that required physical contact with the person arrested.

Witness Officer: LT. ARNALDO ALVARADO

- *Lt. Alvarado is a § 87(2)(b).*
- *Lt. Alvarado worked from 2:45 p.m. to 11:30 p.m. on October 13, 2010, assigned as the Desk Officer in the 76th Precinct stationhouse.*

Memo Book

Lt. Alvarado’s memo book indicates that he was assigned as the desk officer for his entire tour (Encl. 5N-O).

Command Log

At 4:50 p.m. on October 13, 2010, Lt. Alvarado noted the following in the 76th Precinct Command Log (Encl. 5P): “Dep. Sheriffs Basantis, Anthony and Jason, Chando of Burlington County Sheriff’s Office ran a New Jersey license plate § 87(2)(b) which came up as stolen. They were assisted by the 76th Precinct Anti-Crime team (Sgt. Quigley) in a car stop. The perpetrator was arrested and brought back to the 76th Precinct stationhouse. Further investigation revealed that the plate was not stolen and a voided arrest was prepared.”

CCRB Testimony

On April 12, 2011, Lt. Alvarado was interviewed at the CCRB (Encl. 5Q-R).

On October 13, 2010, Lt. Alvarado was assigned as the desk officer in the 76th Precinct stationhouse for his entire tour. At some point during the tour a radio transmission was sent by a dispatcher indicating that officers from an outside agency were chasing an individual in a vehicle and needed assistance. Lt. Alvaro

recalled that Sgt. Quigley and officers from the precinct anti-crime team, who were in the stationhouse at the time, responded. He did not recall if any units besides the anti-crime team responded.

The anti-crime team returned to the stationhouse with a male prisoner, § 87(2)(b) and two Deputies from the Burlington County Sheriff's office. § 87(2)(b) was brought before the desk and was processed. Lt. Alvarado did not recall which officers were with the prisoner at the desk but stated that at no point did he hear an officer tell § 87(2)(b) to "shut the fuck up" and that he would have immediately corrected any officer who would have done that in front of him.

Subject Officer: PO TSZ KWAN

- *PO Kwan is a § 87(2)(b).*
- *PO Kwan worked from 9:30 a.m. to 6:05 p.m. on October 13, 2010. PO Kwan was assigned to go to 1 Police Plaza. PO Kwan returned to the 76th Precinct stationhouse at approximately 2:00 p.m.*

Memo Book

PO Kwan's memo book (Encl. 5S) notes that at 4:15 p.m. he responded to BQE and Kane Street in regards to request for assistance ("10-85") from New Jersey police officers.

CCRB Testimony

On April 12, 2011, PO Kwan was interviewed at the CCRB (Encl. 5U-V).

On October 13, 2010, PO Kwan was assigned to go to police headquarters. At approximately 2:00 p.m., PO Kwan returned to the 76th Precinct stationhouse. He did not recall what he was assigned to when he returned, who he was partnered with, or whether he was in plainclothes or a uniform and these facts were not listed in his memo book.

At approximately 4:15 p.m., PO Kwan was inside the stationhouse when a radio call came in regarding officers from a New Jersey Sheriff's Office requesting assistance somewhere on the BQE. Several officers, including PO Kwan ran out of the stationhouse. PO Kwan entered a vehicle and drove towards the BQE. As PO Kwan drove, the dispatcher provided updates of the stolen vehicle's whereabouts. At some point an update was sent that the vehicle had been stopped at the intersection of BQE and Kane Street. When PO Kwan arrived at BQE and Kane Street, he observed PO Cunningham escorting a handcuffed § 87(2)(b) to an unmarked car and placing him inside. PO Kwan did not hear any officers speak discourteously to § 87(2)(b) or use any force against him. PO Kwan did not recall which officers, besides PO Cunningham, were present at the scene when he arrived. PO Kwan entered his vehicle and returned to the 76th Precinct stationhouse. At the 76th Precinct stationhouse, PO Kwan searched § 87(2)(b) in front of the desk and helped process his arrest. PO Kwan denied ever having told him to "shut the fuck up" and he did not hear any other officers do so.

Witness Officer: PO JULIO RODRIGUEZ

- *PO Rodriguez is a § 87(2)(b).*
- *PO Rodriguez worked from 9:30 a.m. to 12:05 a.m. on October 13, 2010, assigned as to Precinct Anti-Crime in the 76th Precinct with Sgt. Patrick Quigley and PO Kensington Cunningham. They were in plainclothes and assigned to an unmarked black vehicle.*

Memo Book

PO Rodriguez's memo book (Encl. 5W-Z) has no entries regarding this incident. It does indicate that he made an arrest at 2:40 p.m.

CCRB Testimony

On April 12, 2011, PO Rodriguez was interviewed at the CCRB (Encl. 5AA-BB).

At approximately 2:40 p.m., on October 13, 2010, PO Rodriguez, Sgt. Quigley, and PO Cunningham arrested an individual and brought him to the 76th Precinct stationhouse. PO Rodriguez was assigned to process the prisoner. While PO Rodriguez was processing the prisoner, a "10-13" radio call, of officers in need of immediate assistance, was broadcasted in the stationhouse. PO Cunningham and Sgt. Quigley ran out of the stationhouse. PO Rodriguez did not leave and remained with the prisoner. After some time, PO Cunningham and Sgt. Quigley returned to the stationhouse with § 87(2)(b). When they returned, PO Rodriguez was sitting at a computer in front of the holding cells, still processing the earlier prisoner. PO Rodriguez stated that at no time did he hear or observe an officer tell § 87(2)(b) to "shut the fuck up."

NYPD Document(s)

76th Precinct Roll Calls

- The 76th Precinct tour 2 roll call (Encl. 7A-H) indicates that Sgt. Quigley was assigned as the supervisor of the anti-crime team. The rest of the anti-crime team consisted of PO Cunningham, PO Rodriguez and PO Kwan. The anti-crime team was scheduled to work from 9:30 a.m. to 6:05 p.m. The undersigned investigator, along with Lt. Jennifer Silva, reviewed the roll call and identified no other plainclothes teams listed on the roll call.

The 76th Precinct tour 3 roll call (Encl. 7I-L) indicates that Lt. Alvarado was assigned to the desk from 2:45 p.m. to 11:30 p.m. The only plainclothes team listed on the roll call, the tour 3 anti-crime team, was scheduled to begin working at 6:00 p.m., an hour and a half after this incident occurred.

Summons/Arrest for Incident and Disposition

- On October 13, 2010, § 87(2)(b)'s arrest was voided (Encl. 8A).

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim on January 12, 2011 (Encl. 4M-P). According to the Law Department, a 50-H hearing was scheduled for § 87(2)(b) on § 87(2)(b). The 50-H hearing, however, did not take place and has not been rescheduled.

Civilian(s) Criminal History

- As of July 12, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian(s) CCRB History

- This is the first CCRB complaint involving § 87(2)(b) (Encl. 1D).

Subject Officer(s) CCRB History

- PO Kensington Cunningham has been a member of the service for eight years and there are no substantiated CCRB allegations against him (Encl. 1A).
- Sgt. Patrick Quigley has been a member of the service for seven years and there are no substantiated CCRB allegations against him (Encl. 1B).

- PO Tsz Kwan has been a member of the service for seven years and there are four substantiated CCRB allegations against him (Encl. 1C):
 - In regards to CCRB case number 200711532, allegations of physical force, entry of premises, threat of arrest, and frisk were substantiated against PO Kwan. An NYPD disposition has yet to be entered for this case.

Conclusion

Identification of Subject Officer(s)

- PO Cunningham, Sgt. Quigley, and PO Kwan acknowledged their interactions with § 87(2)(b) and matched their descriptions provided by § 87(2)(b) as a black male, white male, and an Asian male, respectively. Allegations of physical force, gun pointed, and discourtesy were pleaded against PO Cunningham; allegations of vehicle stop, gun pointed, and discourtesy were pleaded against Sgt. Quigley; and a discourtesy allegation was pleaded against PO Kwan. The vehicle stop allegation was pleaded against Sgt. Quigley because he was the highest ranking officers on scene and the supervisor of the anti-crime team that effected the stop of § 87(2)(b)'s vehicle.
- § 87(2)(b) described an approximately 5'6" tall Hispanic plainclothes male in his early-to-mid-30s with a "chubby" build and short black hair who spoke to him discourteously during his arrest. This description closely matched the fourth member of the 76th Precinct anti-crime team, PO Rodriguez. However, according to his own statement and the statement of his partners, he had made an arrest prior to this incident and had remained inside the stationhouse to process that arrest while the rest of the team left to arrest § 87(2)(b). This meant that he could not have been the officer who allegedly spoke discourteously to § 87(2)(b) at the BQE and Kane Street. An examination of the relevant police documentation, as previously discussed, did not reveal any other likely officers. Furthermore, neither MAS nor the NYPD Communications Division was able to identify a SPRINT for this incident (Encl. 11A). One possibility is that this discourtesy was spoken by an NYPD officer who this investigation has been unable to identify. An alternative possibility is that it was spoken by one of the New Jersey Sheriff's Deputies who had followed § 87(2)(b) from New Jersey, in which case it would be out of the CCRB's jurisdiction. Either way, without further information, the investigation is unable to identify this officer. An allegation of discourtesy was therefore pleaded against "An officer" from the 76th Precinct.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley supervised the stop of the car in which § 87(2)(b) was an occupant.

Sgt. Quigley stated that he stopped § 87(2)(b)'s vehicle based on the request that had been made by the New Jersey Deputy Sheriff's for assistance in apprehending a suspect in a stolen vehicle. When Sgt. Quigley arrived on the BQE, the vehicle chase was still in progress and § 87(2)(b)'s vehicle matched the description and plate number provided in the call for assistance. It is undisputed that such a request was made and that § 87(2)(b)'s vehicle, based on his own stolen property report made three years prior, was the vehicle suspected of being a stolen vehicle.

People v. Barreras, 677 N.Y.S.2d 526 (1998 - 1st Dept) (Encl. 1A-E) held that a vehicle stop and subsequent detention of a driver requires that officers have a reasonable belief that a traffic infraction has occurred or criminality is afoot and that the subsequent interactions must be related in scope to the justification for the stop. § 87(2)(b), § 87(2)(g)

Allegation B – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley pointed his gun at § 87(2)(b)

Allegation C – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham pointed his gun at § 87(2)(b)

NYPD v. Gilner, OATH Index No. 955/00 (Sept. 6, 2000) (Encl. 0F-X) established a broad standard for the acceptable drawing and point of a firearm, stating that an officer is allowed to do so as long as he or she has a reasonable fear for his or her own or another person's safety. § 87(2)(b), § 87(2)(g)

Allegation D – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)

NYPD v. White, OATH Index No. 7866/03 (Oct. 7, 2004) (Encl. 0AA-DD) held that an officer's use of expletives to gain cooperation in lieu of using physical force was distinguishable from a gratuitously disrespectful remark and therefore not considered actionable misconduct. § 87(2)(b), § 87(2)(g)

Allegation E – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn and at the 76th Precinct stationhouse, PO Kensington Cunningham spoke obscenely and/or rudely to § 87(2)(b)

Allegation H – Discourtesy – At the 76th Precinct stationhouse, Sgt. Patrick Quigley spoke obscenely and/or rudely to § 87(2)(b)

Allegation I – Discourtesy – At the 76th Precinct stationhouse, PO Tsz Kwan spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) testified that in front of the desk at the 76th Precinct stationhouse, Sgt. Quigley, PO Cunningham, and PO Kwan told him to “shut the fuck up,” repeatedly, as he tried to explain the misunderstanding regarding his vehicle to the officers. All three officers and Lt. Alvarado, who was the desk officer at this time, denied that this was the case. Furthermore, § 87(2)(b) testified PO Cunningham also spoke to him discourteously during his arrest at the BQE and Kane Street. PO Cunningham denied having done so. § 87(2)(b), § 87(2)(g)

Allegation F – Discourtesy – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, an officer spoke obscenely and/or rudely to § 87(2)(b)

As previously discussed, the investigation was unable to identify the officer who § 87(2)(b) alleged said to him, “Shut the fuck up, you're lucky I didn't break your teeth.” § 87(2)(g)

§ 87(2)(g)

Allegation G – Force – At the Brooklyn Queens Expressway and Kane Street in Brooklyn, PO Kensington Cunningham used physical force against § 87(2)(b)

§ 87(2)(b) admitted to having resisted PO Cunningham's attempt to place him into the patrol car.

§ 87(2)(b), § 87(2)(g)

Team: 5

Investigator: _____ :
Signature Alexander Opoku-Agyemang July 26, 2011
Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date